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**HAND DELIVERED**

Public Service Commission of Utah  
400 Heber M. Wells Building  
160 East 300 South  
Salt Lake City, Utah 84111

Re: Qwest Agreements With CLECs

Dear Commissioners:

This letter will provide you with background information regarding a proceeding in Minnesota in which the State Department of Commerce ("DOC") is arguing that certain provisions of 11 agreements between Qwest and CLECs should have been filed for the prior approval of the Minnesota Public Utility Commission. Qwest vigorously disputes the DOC's allegations. It is important to understand what this case is about -- and what it is not.

The DOC's complaint presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior state commission approval under Section 252 of the federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement? ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. Yet the Telecommunications Act does not require literally every provision of every ILEC-CLEC contract to be filed for state commission approval. The DOC agrees, and is complaining about only certain selected provisions from its review of all the contracts entered into between Qwest and Minnesota CLECs since the start of 2000.

Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires state commission filing and prior approval, and when it does not. Qwest believes that the judgments it made in this area complied with a fair and proper reading of the Act. Now Qwest's judgments will be second-guessed in the Minnesota complaint proceeding. However, it is telling that the DOC itself, when questioned by one of the Minnesota Commissioners at a hearing some weeks ago, was unable to set forth a clear and cogent explanation of where the line falls between contract provisions that must be filed under Section 252, and those that do not. The DOC fell

back on vague suggestions that "you know it when you see it." Yet the ambiguity of the Section 252 "mandatory filing" line is the very issue presented here.

Qwest recognizes that sometimes its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act, in which case they should be filed with and approved by a state commission. However, other times the negotiations may resolve past disputes, or result in contract arrangements that do not create state commission filing obligations.

The provisions at issue in Minnesota fall into four general categories -- none of which require filing under Section 252:

- ***Agreements that define business-to-business administrative procedures at a granular level.*** Many of the provisions cited by the DOC involve business processes that go well beyond the level of detail that Section 252 of the Act requires to be filed in an interconnection agreement. For example, Qwest has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest has agreed to meetings and similar administrative processes to review business questions and concerns. Qwest, like any vendor, tailors its implementation processes to meet the varying needs of its CLEC customers.
- ***Agreements to settle disputes.*** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. The parties managed to reach settlement without troubling the various state commissions or otherwise proceeding through formal hearings. Section 252 does not require that such settlements be filed as interconnection agreements and approved by the state commission.
- ***Agreements implementing Commission orders.*** In at least one provision, the DOC complained about provisions where Qwest is simply stating that it will comply with the Minnesota Commission's orders pending further proceedings.
- ***Agreements on matters outside the scope of Sections 251 and 252.*** Some of the DOC's complaints go to agreements that have nothing to do with Section 251, and therefore do not implicate Section 252 at all. For example, the DOC cites one provision dealing with the carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. In another case, Qwest is buying non-regulated services from the CLEC.

Matters in Minnesota are moving on a fast track. Qwest has as much of an interest as any party in getting further clarity regarding which contract provisions with CLECs must be filed and approved, and which do not. Qwest and the DOC asked the

Minnesota PUC to resolve this issue on an expedited basis, and the Commission has agreed to do so.

However, this is also an important issue for Utah and all other states. Section 252 is a national standard, and all states have an interest in seeing that it is not misinterpreted. First, an overbroad reading of Section 252 means that ILECs and CLECs would have to file many agreements between them that the Telecommunications Act did not actually intend to require state commission approval. This would unnecessarily burden all state commissions with added time-consuming review proceedings, and could delay the effective date of such agreements. Such micro-regulation is the antithesis of the Telecommunications Act's intent.

Second, an overbroad application of Section 252 would implicate the validity of ILEC-CLEC agreements covering operations in multiple states. By law, if a contract provision truly qualifies as a "term of interconnection" under Section 251 of the Act, it only is valid after it has been submitted to and approved by a state commission. Thus, if the Minnesota PUC decides that one or more of the contract provisions cited by the DOC should have been filed and approved under Section 252, then the relevant provisions were never actually valid. This would raise questions as to the legal status of those same terms in other states.

Third, an overbroad interpretation of Section 252 would be contrary to the Telecommunications Act's goal of encouraging ILECs and CLECs to work out their arrangements through private negotiations -- subject only to the specific minimum pre-approval requirements for those contract provisions that are truly within the scope of Sections 251 and 252. Qwest takes its obligations under the Telecommunications Act and state acts, such as the Utah Telecommunications Reform Act, very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of our wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential, and Qwest respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overbroad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

Qwest also has taken strong exception to the DOC's allegations that it has discriminated against other CLECs. Qwest has provided all CLECs with the same basic rates, terms and conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process. Similarly, Qwest does not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation.

The Minnesota Commission is holding a hearing to address the DOC's claims this week. Qwest will defend its position vigorously. Meanwhile, however, we want you to be able to see for yourself what the Minnesota case is all about. To that end, we have attached a copy of our Answer to the DOC complaint (Attachment A). This Answer explains why, for one or more reasons, each of the contractual arrangements cited by the DOC falls outside the minimum filing requirements of Section 252.

Furthermore, Qwest has nothing to hide regarding the agreements cited by the DOC.<sup>1</sup> As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting for the Commission's benefit copies of the agreements identified by the Minnesota DOC that involve CLECs operating in Utah. These agreements fall into two categories. One set of contracts is no longer in effect; they are only matters of historical interest at this point (Attachment B). The second set of agreements is in effect today, and Qwest is submitting them as "conditional" interconnection agreements (Attachment C).<sup>2</sup> Should the Commission determine that they fall within the scope of Section 252 -- and Qwest submits they do not -- then those agreements may be approved as interconnection agreements in Utah. Qwest has also provided these contracts to the Division of Public Utilities in response to a data request dated March 21, 2002.

In addition to the foregoing, we wish to advise you of one additional matter related to the Minnesota complaint. The Minnesota complaint presents a fundamental legal question: what arrangements (and provisions thereof) between ILECs and CLECs are subject to the filing and approval process under Section 252(a) of the federal Telecommunications Act of 1996. This is an issue of federal law that applies not merely to Minnesota and Qwest, but to every state and every incumbent LEC. Indeed, many of the Qwest-CLEC arrangements that are at issue in the Minnesota complaint are not limited to Minnesota, but apply in other states as well.

Several of Qwest's in-region states have made formal and informal inquiries into this issue, and Qwest is concerned that the result of formal proceedings in multiple states may result in Qwest being subject to conflicting or at least inconsistent filing obligations with respect to the identical agreement or provision. Obviously, Qwest disputes the interpretation of Section 252(a), and its applicability to the agreements at issue, suggested by the Minnesota complaint. Regardless of whose interpretation is correct, however, Qwest (and other parties) need to have this issue resolved in a consistent fashion, particularly in light of the fact that CLECs often request Qwest to negotiate with them on a multi-state basis. Accordingly, on April 23, 2002, Qwest filed a formal petition asking the FCC to issue a declaratory ruling to assist in drawing the line between agreements and provisions that are subject to section 252(a), and those that are not.

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<sup>1</sup> In fact, the Commission is well aware of some of these agreements because they were disclosed to the Commission as the basis for withdrawal of opposition of some CLECs to the Qwest-U S WEST merger. See *In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp. and U S WEST Communications, Inc.*, Docket No. 99-049-41, Report and Order (June 9, 2000) at 8.

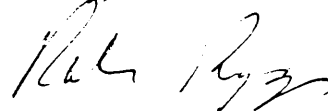
<sup>2</sup> One provision of the ATI agreement, which is marked as Exhibit 1, is still in effect. Thus, Attachment C includes the one provision from the ATI agreement that is still in effect.

For your convenience and information, a copy of Qwest's petition filed with the FCC is attached (Attachment D). Qwest hopes that the FCC's ruling and guidance on this important legal question will assist the state commissions, Qwest, and CLECs as these matters arise in the future.

We hope that this information is helpful to the Commission. We want to reemphasize that Qwest strongly believes that it made correct legal determinations on whether these agreements had to be filed for Commission approval. We certainly acted in good faith in making these decisions, and we stand by our actions.

Please contact me if you have any further inquiries about these matters. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Riggs", written in a cursive style.

Robin Riggs  
Utah Vice President